

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. N MC 51401.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication--Evidence:
Generally--Evidence: Presumptions--Federal Land Policy and Management Act of 1976: Recordation of Affidavit to Hold Mining Claim--Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

4. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Paul T. Ryan, Melvin V. Lunt, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Paul T. Ryan and Melvin V. Lunt appeal the decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 23, 1983, which declared the unpatented M-R lode mining claim, N MC 51401, abandoned and void for failure to file on or before December 30, 1980, 1981, and 1982, evidence of assessment work performed on the claim or a notice of intention to hold the claim, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellants state that they had not filed any proof of labor as required by 43 CFR 3833.2-1 because they had never been advised that their claim was approved. They state they have performed development work on the claim. They do not suggest that they have recorded any proof of labor in Clark County, Nevada, situs of the claim.

The claim was located January 27, 1979, and was recorded in Clark County, Nevada, on February 6, 1979, and with BLM on February 27, 1979, as N MC 51401.

[1] Under section 314 of FLPMA, the owner of a mining claim located after October 21, 1976, must record the notice of location with BLM within 90 days after location, and must file a notice of intention to hold the claim or evidence of the performance of assessment work on the claim in the proper BLM office on or before December 30 of every calendar year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] The Board responded to arguments similar to those here presented in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellants' argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. 371-72.

[4] BLM was under no obligation to notify appellants of the need for the 1980, 1981, and 1982 filings, nor that none of them had been received. When one locates a mining claim on Federal land, no approval by BLM is necessary. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellants.

Appellants may wish to consult with BLM about the possibility of relocating this claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

